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OFFICE OF
SOLID WASTE AND EMERGENCY
RESPONSE

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SECURITY NOTICE
To Federal, State and Local Officials and Researchers

With this notice, you are receiving access to an electronic database developed by the U.S. Environmental Protection Agency (EPA). The database was created from Risk Management Plans (RMPs) submitted by facilities subject to EPA's chemical accidental release prevention and response regulations at 40 CFR Part 68. The database, together with the RMP*Review software included in this package, will allow you to view and analyze RMPs in various ways.

A key purpose of RMPs is to inform you and the public about facilities' chemical safety programs and stimulate public dialogue about how chemical safety in the community might be improved. However, ***until at least August 5, 2000, the off-site consequence analysis (OCA) sections of RMPs, the portion of EPA's database drawn from those sections, and certain other related materials are not available to the public.*** While you may share with the public the information in those OCA sections and the related database, ***it is a violation of federal law for you to disclose or distribute to the public the OCA sections themselves or the related materials, except as authorized by law.*** This notice describes the applicable restrictions and the ***criminal*** penalties for violating those restrictions.

What federal law establishes these restrictions?

The Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (Public Law 106-40), signed into law on August 5, 1999, establishes the restrictions described in this notice. Prior to the Act's passage, concern was raised that EPA would be required by federal law to make RMPs, including the OCA portions of RMPs, available to the public on the Internet. Law enforcement officials expressed concern that Internet posting of a large OCA database could pose a national security risk. The Act was passed to address this concern.

Exactly what materials are subject to the restrictions?

The following materials are subject to the Act's restrictions:

- Sections 2 through 5 (concerning the off-site consequences of "worst case" and "alternative releases" of toxic and flammable substances) of the RMPs that facilities have submitted to EPA under 40 CFR Part 68;
- The portions of EPA's electronic database created from those sections; and

- Any statewide or national ranking of identified facilities derived from those sections.

This notice refers to these items as “the OCA materials.” The OCA materials do *not* include the Executive Summary portions of RMPs. An Executive Summary is required to contain at least a brief description of the off-site consequence analysis conducted by the facility submitting the RMP. Since Executive Summaries are not formatted in a way that lends itself to creation of a large OCA database, the Act’s restrictions do not extend to them.

How are these materials restricted?

Disclosure and distribution of the OCA materials is limited at least until August 5, 2000. The Act requires the Federal government to conduct an assessment and issue regulations by August 5, 2000, to govern the distribution of the OCA materials following that date. *Prior to August 5, 2000, the Act authorizes the OCA materials to be distributed only to “covered persons” for their “official use” in accordance with certain geographical restrictions. The Act also prohibits “covered persons” from disclosing to the public the OCA materials in any form (electronic or paper), except as authorized by the Act, including the regulations issued under the Act.*

The Act’s restrictions are narrow in scope. The Act “does not restrict the dissemination of off-site consequence analysis information by any covered person in any manner or form except in the form of a [RMP]” (Clean Air Act section 112(r)(7)(H)(xii)(II)). Covered persons are forbidden from publicly disclosing sections 2 through 5 of RMPs because those sections could be compiled fairly easily into a large OCA database that could be posted on the Internet. Consequently, a covered person may not show, or distribute duplicate copies of, those RMP sections to the public. However, a covered person is *not* prohibited from communicating the information in those sections to the public, orally or in writing, as long as the format in which the information is presented does not replicate sections 2 through 5 of an RMP. A covered person may, for example, answer questions from the public about the potential off-site consequences of an accident at a particular facility using the information reported in that facility’s RMP. A covered person is also *not* prohibited from disclosing or distributing the Executive Summary of an RMP, including the OCA portion of the summary.

Similarly, the Act does *not* restrict the dissemination of an electronic database “in any manner or form except in the form . . . of an electronic data base created by [EPA]” from the OCA portions of RMPs (Clean Air Act section 112(r)(7)(H)(xii)(II)).

Who is a “covered person”?

There are three categories of “covered persons”:

- *Federal covered person:* An officer or employee of the United States or of an

- agent or contractor of the Federal Government.
- *State or local covered person:* An officer or employee of a State or local government or of an agent or contractor of a State or local government, or an individual affiliated with an entity that has been given, by a State or local government, responsibility for preventing, planning for, or responding to accidental releases (*for example*, a volunteer firefighter or a member of a State Emergency Response Commission (SERC) or a Local Emergency Planning Committee (LEPC) established under the federal Emergency Planning and Community Right-to-Know Act), or an officer and employee of an agent or contractor of such an entity.
- *Covered researcher:* A researcher as identified by EPA under the qualified researcher provision of the Act.

The Act provides that its restrictions apply “only to covered persons”(Clean Air Act section 112(r)(7)(H)(xii)(I)). Accordingly, a private individual or entity is *not* prohibited from distributing the OCA materials. Because a facility may choose to distribute the OCA sections of its RMP, the Act allows covered persons to disclose to the public the OCA sections of an RMP that has been released to the public “without restriction” by the facility submitting the RMP. This exemption is further described below.

As a “covered person,” to whom can I distribute the OCA materials?

You are prohibited from disclosing or distributing the OCA materials to the public until at least August 5, 2000, but you may share the OCA materials with certain categories of covered persons *only* as described below. If you distribute the OCA materials to another covered person, you should send a copy of this notice with the materials so that the recipient will be informed of the applicable restrictions.

- ***A Federal covered person may distribute to***
 - another Federal covered person, for that person’s official use, any or all of the OCA materials; and
 - a State or local covered person, for that person’s official use, the OCA materials *only* for the facilities located in that person’s State.
- ***In addition, a Federal covered person who works for the EPA office designated to transmit OCA materials may distribute to***
 - a State or local covered person, *at that person’s request* and for that person’s official use, the OCA materials for facilities located in States other than that person’s State; and
 - a covered researcher, any or all of the OCA materials.

- *A **State or local covered person** may distribute the OCA materials for **only** the facilities located in his or her State to:*
 - a Federal covered person;
 - a State or local covered person in his or her State; and
 - a State or local covered person in a State *contiguous* to his or her State, for that person's official use.
- *A **covered researcher** may not disseminate any portion of the OCA materials received from EPA under the qualified researcher provision of the Act or any statewide or national ranking of identified facilities derived from those materials.*

Are there any exceptions to these distribution restrictions?

Yes. The restrictions described above do *not* apply to sections 2 through 5 of RMPs for facilities that have released those sections of their RMPs to the public without restriction. The Act requires any facility that releases those sections of its RMP to the public without restriction to notify EPA that it has done so. The Act further requires EPA to make publicly available a list of facilities that have so notified EPA. EPA will post that list on its RMP*Info website at <http://www.epa.gov/ceppo/tools/rmp-info/oca-pub.htm>. You may also get a copy of the list by calling the RMP Reporting Center at (703) 816-4434.

Do these restrictions override the public information laws of my State or locality?

In general, yes. However, the Act provides that a State that collects *under its own law* information on the off-site consequences of chemical releases is not precluded from making that data available to the public.

What does “official use” mean?

“Official use” is defined by the Act to mean “an action of a Federal, State, or local government agency or an entity [such as a SERC, LEPC or volunteer fire department] intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.”

Following are examples of what would constitute “official use” of OCA materials by a covered person:

- Discussing with other covered persons and/or the public the information in sections 2 through 5 of a facility's RMP as it relates to emergency planning, prevention or response, so long as you do not disclose or distribute the OCA materials to the public or to other covered persons with whom you are not authorized to share the materials.
- Analyzing the information in sections 2 through 5 of facilities' RMPs, or EPA's

database created from those sections, to determine which facilities in your jurisdiction present the greatest risk to the public in case of an accidental release, so that you can focus your emergency planning, prevention or response efforts accordingly.

- Communicating the results of the analysis described above to other covered persons and/or the public, so long as the results do *not* rank facilities either nationally or statewide, or, if the results do take such a form, so long as they are communicated *only* to covered persons with whom you are authorized to share such materials.
- Comparing the information in sections 2 through 5 of RMPs for facilities in your jurisdiction with those for facilities in other jurisdictions to gain insight into whether the facilities in your jurisdiction have appropriate accident prevention programs.
- Communicating the results of the comparison described above with other covered persons and/or the public, so long as you do not disclose or distribute the OCA materials to the public or to other covered persons with whom you are not authorized to share the materials.
- Considering the information in sections 2 through 5 of the RMPs submitted by facilities in your jurisdiction in making decisions about zoning or land use planning.

Following are examples of what would ***not*** constitute “official use” of the OCA materials by a covered person:

- Disclosing (for example, by means of an overhead projector) or distributing (in paper or electronic form) the OCA materials as part of a public information or education campaign, even if one of the functions of your agency or entity is to inform or educate the public about chemical emergency risks.
- Disclosing or distributing the OCA materials to a private party in a court suit involving a chemical accident at a facility (note that disclosure to judges and court employees may be permissible since they are covered persons).

What are the penalties for violating these restrictions?

A covered person who willfully violates a restriction or prohibition of the Act, including the regulations under the Act, is subject to a fine for an infraction under title 18 of the United States Code, section 3571. For individuals, the fine is not more than \$5,000; for organizations, the fine is not more than \$10,000. If unauthorized disclosure relates to more than one facility, disclosure of each facility’s OCA information is a separate offense. The total of all penalties that

may be imposed on a single person or organization cannot exceed \$1,000,000 for violations committed during any one calendar year.

Where can I get more information about the restrictions?

A set of questions and answers concerning the new Act and its restrictions is available at <http://www.epa.gov/ceppo/q&a.html>. EPA, in consultation with other federal agencies, will continue to add new questions and answers as the need arises.

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Chemical Emergency Preparedness and Prevention Office